

AMENDED IN ASSEMBLY JUNE 15, 2005

SENATE BILL

No. 963

Introduced by Senators Ashburn and Romero

February 22, 2005

An act to amend Section 1203.016 of the Penal Code, relating to home detention, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 963, as amended, Ashburn. Home detention: electronic monitoring.

Existing law permits counties to authorize a home detention program using electronic monitoring, as specified.

This bill would authorize the use of global positioning system devices and other supervising devices for those purposes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1203.016 of the Penal Code is amended
2 to read:
3 1203.016. (a) Notwithstanding any other provision of law,
4 the board of supervisors of any county may authorize the
5 correctional administrator, as defined in subdivision (h), to offer
6 a program under which minimum security inmates and low-risk
7 offenders committed to a county jail or other county correctional
8 facility or granted probation, or inmates participating in a work

1 furlough program, may voluntarily participate in a home
2 detention program during their sentence in lieu of confinement in
3 the county jail or other county correctional facility or program
4 under the auspices of the probation officer.

5 (b) The board of supervisors may prescribe reasonable rules
6 and regulations under which a home detention program may
7 operate. As a condition of participation in the home detention
8 program, the inmate shall give his or her consent in writing to
9 participate in the home detention program and shall in writing
10 agree to comply with the rules and regulations of the program,
11 including, but not limited to, the following rules:

12 (1) The participant shall remain within the interior premises of
13 his or her residence during the hours designated by the
14 correctional administrator.

15 (2) The participant shall admit any person or agent designated
16 by the correctional administrator into his or her residence at any
17 time for purposes of verifying the participant's compliance with
18 the conditions of his or her detention.

19 (3) The participant shall agree to the use of electronic
20 monitoring, which may include global positioning system
21 devices or other supervising devices for the purpose of helping to
22 verify his or her compliance with the rules and regulations of the
23 home detention program. The devices shall not be used to
24 eavesdrop or record any conversation, except a conversation
25 between the participant and the person supervising the participant
26 which is to be used solely for the purposes of voice
27 identification.

28 (4) The participant shall agree that the correctional
29 administrator in charge of the county correctional facility from
30 which the participant was released may, without further order of
31 the court, immediately retake the person into custody to serve the
32 balance of his or her sentence if the electronic monitoring or
33 supervising devices are unable for any reason to properly
34 perform their function at the designated place of home detention,
35 if the person fails to remain within the place of home detention as
36 stipulated in the agreement, if the person willfully fails to pay
37 fees to the provider of electronic home detention services, as
38 stipulated in the agreement, subsequent to the written notification
39 of the participant that the payment has not been received and that
40 return to custody may result, or if the person for any other reason

1 no longer meets the established criteria under this section. A
2 copy of the agreement shall be delivered to the participant and a
3 copy retained by the correctional administrator.

4 (c) Whenever the peace officer supervising a participant has
5 reasonable cause to believe that the participant is not complying
6 with the rules or conditions of the program, or that the electronic
7 monitoring devices are unable to function properly in the
8 designated place of confinement, the peace officer may, under
9 general or specific authorization of the correctional
10 administrator, and without a warrant of arrest, retake the person
11 into custody to complete the remainder of the original sentence.

12 (d) Nothing in this section shall be construed to require the
13 correctional administrator to allow a person to participate in this
14 program if it appears from the record that the person has not
15 satisfactorily complied with reasonable rules and regulations
16 while in custody. A person shall be eligible for participation in a
17 home detention program only if the correctional administrator
18 concludes that the person meets the criteria for release
19 established under this section and that the person's participation
20 is consistent with any reasonable rules and regulations prescribed
21 by the board of supervisors or the administrative policy of the
22 correctional administrator.

23 (1) The rules and regulations and administrative policy of the
24 program shall be written and reviewed on an annual basis by the
25 county board of supervisors and the correctional administrator.
26 The rules and regulations shall be given to or made available to
27 any participant upon request.

28 (2) The correctional administrator, or his or her designee, shall
29 have the sole discretionary authority to permit program
30 participation as an alternative to physical custody. All persons
31 referred or recommended by the court to participate in the home
32 detention program pursuant to subdivision (e) who are denied
33 participation or all persons removed from program participation
34 shall be notified in writing of the specific reasons for the denial
35 or removal. The notice of denial or removal shall include the
36 participant's appeal rights, as established by program
37 administrative policy.

38 (e) The court may recommend or refer a person to the
39 correctional administrator for consideration for placement in the
40 home detention program. The recommendation or referral of the

1 court shall be given great weight in the determination of
2 acceptance or denial. At the time of sentencing or at any time that
3 the court deems it necessary, the court may restrict or deny the
4 defendant's participation in a home detention program.

5 (f) The correctional administrator may permit home detention
6 program participants to seek and retain employment in the
7 community, attend psychological counseling sessions or
8 educational or vocational training classes, or seek medical and
9 dental assistance. Willful failure of the program participant to
10 return to the place of home detention not later than the expiration
11 of any period of time during which he or she is authorized to be
12 away from the place of home detention pursuant to this section
13 and unauthorized departures from the place of home detention
14 are punishable as provided in Section 4532.

15 (g) The board of supervisors may prescribe a program
16 administrative fee to be paid by each home detention participant
17 that shall be determined according to his or her ability to pay.
18 Inability to pay all or a portion of the program fees shall not
19 preclude participation in the program, and eligibility shall not be
20 enhanced by reason of ability to pay. All program administration
21 and supervision fees shall be administered in compliance with
22 Section 1208.2.

23 (h) As used in this section, the following words have the
24 following meanings:

25 (1) "Correctional administrator" means the sheriff, probation
26 officer, or director of the county department of corrections.

27 (2) "Minimum security inmate" means an inmate who, by
28 established local classification criteria, would be eligible for
29 placement in a Type IV local detention facility, as described in
30 Title 15 of the California Code of Regulations, or for placement
31 into the community for work or school activities, or who is
32 determined to be a minimum security risk under a classification
33 plan developed pursuant to Section 1050 of Title 15 of the
34 California Code of Regulations.

35 (3) "Low-risk offender" means a probationer, as defined by
36 the National Institute of Corrections model probation system.

37 (i) Notwithstanding any other law, the police department of a
38 city where an office is located to which persons on an electronic
39 monitoring program report may require the county correctional
40 administrator to provide information concerning those persons.

1 This information shall be limited to the name, address, date of
2 birth, and offense committed by the home detainee. Any
3 information received by a police department pursuant to this
4 paragraph shall be used only for the purpose of monitoring the
5 impact of home detention programs on the community.

6 (j) It is the intent of the Legislature that home detention
7 programs established under this section maintain the highest
8 public confidence, credibility, and public safety. In the
9 furtherance of these standards, the following shall apply:

10 (1) The correctional administrator, with the approval of the
11 board of supervisors, may administer a home detention program
12 pursuant to written contracts with appropriate public or private
13 agencies or entities to provide specified program services. No
14 public or private agency or entity may operate a home detention
15 program in any county without a written contract with that
16 county's correctional administrator. However, this does not apply
17 to the use of electronic monitoring by the California Department
18 of Corrections or the Department of the Youth Authority as
19 established in Section 3004. No public or private agency or entity
20 entering into a contract may itself employ any person who is in
21 the home detention program.

22 (2) Program acceptance shall not circumvent the normal
23 booking process for sentenced offenders. All home detention
24 program participants shall be supervised.

25 (3) (A) All privately operated home detention programs shall
26 be under the jurisdiction of, and subject to the terms and
27 conditions of the contract entered into with, the correctional
28 administrator.

29 (B) Each contract shall include, but not be limited to, all of the
30 following:

31 (i) A provision whereby the private agency or entity agrees to
32 operate in compliance with any available standards promulgated
33 by state correctional agencies and bodies, including the Board of
34 Corrections, and all statutory provisions and mandates, state and
35 county, as appropriate and applicable to the operation of home
36 detention programs and the supervision of sentenced offenders in
37 a home detention program.

38 (ii) A provision that clearly defines areas of respective
39 responsibility and liability of the county and the private agency
40 or entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs, that may arise from, or be proximately caused by, acts or omissions of the contractor. The contract shall provide for annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with statutory provisions and requirements or with the standards established by the contract and with the correctional administrator may be sufficient cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with whom there is a contract is not in compliance pursuant to this paragraph, the correctional administrator shall give 60 days' notice to the director of the private agency or entity that the contract may be canceled if the specified deficiencies are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public

1 safety is present because the private agency or entity has failed to
2 comply with this section.

3 (k) For purposes of this section, “evidence of financial
4 responsibility” may include, but is not limited to, certified copies
5 of any of the following:

6 (1) A current liability insurance policy.

7 (2) A current errors and omissions insurance policy.

8 (3) A surety bond.

9 *SEC. 2. This act is an urgency statute necessary for the*
10 *immediate preservation of the public peace, health, or safety*
11 *within the meaning of Article IV of the Constitution and shall go*
12 *into immediate effect. The facts constituting the necessity are:*

13 *In order to ensure uniformity among counties in how laws*
14 *related to the use of global positioning systems are implemented,*
15 *it is necessary that this act take effect immediately.*